

Sudhakar and Others Vs. Maharashtra State Mining Corp. Ltd.

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Court : Mumbai

Decided On : Jul-25-1990

Reported in : [1991(62)FLR174]; (1992)ILLJ161Bom

Judge : A.A. Halbe, J.

Acts : [Trade Unions Act, 1926](#) - Sections 30

Appeal No. : Contempt Petition No. 11/1990 in W.P. No. 3843/1989

Appellant : Sudhakar and Others

Respondent : Maharashtra State Mining Corp. Ltd.

Judgement :

1. The petitioners-employees of the respondent-Maharashtra State Mining Corporation Ltd. approached this Court with a prayer for punishing the respondent Corporation for having committed breach of the orders passed by the Industrial Court, Aurangabad in complaints Nos. U.L.P. 38/1988 to 41/1988. According to the petitioners the Industrial Court was pleased to pass the order on August 22, 1989 in the above complaints whereby the Corporation was called upon to comply with the requirements enunciated in paras 2, 3 and 4 of that order. According to the petitioners in spite of this order and in spite of the representations made by them thereafter to the respondent-Corporation, nothing was done by the Corporation towards the implementation of the order referred above. It is also contended that the Industrial Court was pleased to observe that the respondents

had committed unfair labour practice within the meaning of Item 6 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act (U.L.P. Act for the purpose of brevity). This is indeed opposed by the respondent-Corporation and it has been contended that the directions given by the Industrial Court have been complied with from time to time under various communications and further even if this Court comes to the conclusion that there is delay in implementation of that order, the respondent-Corporation seeks to tender apology through its officer. It is further contended that the order of the Industrial Court has not become final and a Writ Petition No. 3843 of 1989 has been preferred, rule has been issued although the interim relief has been refused. According to the learned Advocate for the respondent the matter has become virtually sub judice and hence it cannot be conclusively said that the breach of the order has been intentional, deliberate and only motivated to deprive the petitioners from the benefits of the order of the Industrial Court.

2. In order to appreciate the rival contentions a brief reference to the facts in the complaints numbered above appears to be necessary. The four complainants were appointed as Watchmen on daily wages with effect from August 15, 1981 in the factory of the respondent Corporation at Aurangabad. After the closure of the unit of the respondent in the year 1984, the other staff namely the supervisory-clerical staff was transferred to another unit. However, as the part of the machinery was stored in the stocking yard at Aurangabad the petitioners were employed to look after them as watchmen at Aurangabad. Initially they were paid some daily-wages ranging from Rs. 6/- to Rs. 8/- which were enhanced with the passage of time. Since March, 1984 they have been paid the wages at the rate of Rs. 300/- per month and since March 1, 1985 this amount has been raised to Rs. 325/- per month. According to the respondent the Corporation is under the control of Ministry of Government of India and the wages of the unskilled employees are fixed by that Ministry and the payment by the Corporation are made in pursuance of those instructions.

3. The complainants alleged that they had completed 240 days of continuous service with the respondent and they were therefore entitled to the benefits of the permanent employees. The Corporation denied and hence they were required to

file the above complaints U.L.P. No. 38/88 to 41/1988.

4. The Industrial Court passed the following order :

(1) It is declared that by keeping the complaints temporary for years together the respondents have committed an unfair labour practice within the meaning of Item No. 6 in Schedule-IV of the PULP Act;

(2) It is directed that the complainants shall be treated as the permanent employees since the date of their appointments i.e. August 15, 1981;

(3) It is further directed that the respondents shall frame the Rules for regulating the services of all the Watchmen working with it and shall also frame the Rules for making a provision to regulate graded pay to the Watchmen, who are appointed on the permanent posts;

(4) The respondents are directed to pay an amount of Rs. 100/- each to each of the complainants by way of costs.

5. In so far as unfair labour practice is concerned in Item 6 of Schedule-IV of the above Act, it means to employ employees as Badlies, Casual or temporary and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees. Of course, the complaints were made in respect of Items 5, 7, 9 and 10; since the order of the Industrial Court does not refer to any of them, it will be deemed that complaints were not acceded to by the Industrial court. Briefly stated, the corporation is alleged to have employed the complainants as Badlies alias Casuals or temporary for years from 1981 onwards with the object of depriving them of the status and privileges of permanent employees. In order to obviate this unfair practice, it seems that the Industrial court was pleased to direct that this unfair practice should be dispensed with by making the petitioners as permanent employees, that their pay should be fixed in a particular grade, that the rules for regulating their services and also for payment of graded pay should be framed as in relation to the permanent post. The respondents were also directed to pay the costs.

6. The learned Advocate for the petitioners in this behalf has urged that these directions have not been complied with inspite of representations made by them in that behalf after the decision of the Industrial Court. There is therefore an open defiance of the order of the Industrial Court and they are therefore entitled to approach this Court for the contempt committed by the respondent, of the Industrial Court as envisaged under Section 48 of the PULP Act. It is also contended that the petitioners are entitled to the back-wages right from the date of their appointment i.e. August 15, 1981 and further that inspite of the requests made by the petitioners to the respondent-Corporation, the Corporation has been indifferent to these petitioners and has thus committed contempt of the Court.

7. Now, the learned advocate for the respondent-Corporation has drawn my attention to various documents which, according to him, amount to compliance of the orders of the Industrial Court. In the first instance, he has contended that by the letter dated October 31, 1989, days before the contempt petition was filed, the respondent-corporation has taken cognizance of the order of the Industrial Court. In that regard he had stated that the letter No. MSMC/89/6703 dated October 31, 1989 clearly informs the petitioners that with reference to the order passed by the Industrial Court on August 22, 1989 the petitioners were informed that they have been entitled to avail all the facilities which are normally extended to other daily rated workers of the Corporation. Now, in this letter there is a clear reference that the petitioners were treated as 'permanent daily rated workers'. In this behalf he has also contended that no grade pay was paid to any of the watchmen employed and hence the question of payment of salary in particular grades did not arise there before i.e. before the order of the Industrial court. All the same it is sought to be impressed by him that the respondent-Corporation has taken cognizance of the order of the Industrial court and has designated the complainants as the permanent workers of the Corporation. It cannot be lost sight of that this is a letter which is admittedly of October 31, 1989 i.e. before the petitioners moved this Court by the contempt petition on January 19, 1990.

8. He has then drawn my attention to Annexure-B dated April 3, 1990 i.e. a letter addressed by the Assistant Manager of the Corporation to the present petitioners. In that letter it is categorically informed that in pursuance of the order dated August

22, 1989 passed by the Industrial Court in the above complaints the services of the complainants were treated as permanent since the date of appointment. Of course it is mentioned that this step was taken without prejudice to the writ petition filed by the respondent-Corporation in the High court. From this letter it is manifestly clear that the directions of the Industrial Court making the complainants as the permanent employees has been implemented by the Corporation. In this regard the learned Advocate for the petitioners has urged that this letter is dated April 3, 1990 and that is obviously after the contempt petition was filed. In this regard, one cannot lose sight of the writ petition filed by the respondent-corporation on December 1, 1989, the rule was issued and hence the matter became sub judice. It has, therefore, been rightly contended by the learned Advocate for the respondent that in view of the situation the Corporation did pass the order in the month of April in pursuance of the directions of the Industrial court. This step was delayed because of the fact that the rule was already issued. This step has to be taken because no interim relief was granted. It would be therefore clear from this letter that the Corporation did treat the complainants as the permanent employees right from the date of their appointments. Now so far as the delay part is concerned, it cannot be said that it was motivated or that it was defiance of the directions of the Industrial Court. The parties are at liberty to move the Courts of law as and when required. If the Corporation has moved this Court in writ petition soon after the order of the Industrial Court and then issued the orders because no stay was granted, it cannot be concluded that the contempt was intended.

9. The learned Advocate for the respondent has also drawn my attention to the office order dated April 23, 1990 wherein for the first time, according to him, the respondent-Corporation was pleased to pay the graded pay of Rs. 460-5-485-10-535 in respect of the watchmen, namely the present complainants. He has also drawn my attention to para 2 of that order and has contended that besides the basic pay the petitioners are entitled to special allowance, for which there are orders of the Central Government of India and the payments have been made accordingly.

10. At this stage, the learned Advocate for the petitioners has urged that the dearness allowance for the city of Aurangabad is around Rs. 700/- but the above office order does not at all indicate the payment of that amount. As stated above, the learned Advocate for the respondents has contended that special allowance is in the nature of dearness allowance payable to the employees; the rates are not fixed by the Corporation but the Corporation is guided in that behalf by the Government of India; the payments have been made accordingly and he has drawn my attention to reply sent by the Corporation to the complainants showing that amounts of Rs. 1,112.10 were paid to each employee. He has therefore contended that this is also a substantial compliance of the order of the Industrial Court. The grades have been fixed, and the petitioners are entitled to the special allowance which is in the nature of dearness allowance payable to the employees.

11. Now, regarding the direction of framing the rules for regulating the services of the watchmen and for payment of graded pay, he has contended that the matter does not fully vest in the Corporation, the approval of the various departments has to be obtained. For that purpose he has drawn my attention to the Standing Orders for Mines/Projects/depots/Establishments (other than Head Office) of the Maharashtra State Mining Corporation Ltd. in the State of Maharashtra. On going through those orders it would be found that they provide for the category of workers, which include permanent workers, they also provide for the payment of wages, the increments, the Acting Allowance, the leave to which an employee is entitled, also half pay leave, extraordinary leave without pay, casual leave, special casual leave, quarantine leave, maternity benefit leave. Now, this would therefore, show that the provision has been made for payment and the service conditions of the employees. In this regard the learned Advocate for the respondent has contended that these rules are enough to show that the order of the Industrial court has been implemented. It is not disputed that the petitioners are paid the costs as directed by the Industrial Court.

12. The learned Advocate for the petitioners has contended that the respondent-Corporation is guilty of unfair labour practice within the meaning of Item 6 of Schedule-IV of the PULP Act. Now, it would be found that with the compliance of the directions of the Industrial Court it can be said that the petitioners are made

permanent employees, that they are entitled to all the benefits of permanent service. It would be also seen that clauses 2, 3 and 4 have been enunciated in the order by way of directions for desisting from the unfair labour practice, as envisaged under Section 30 of the PULP Act. The section reads that the Industrial Court can direct the Corporation to desist from such unfair labour practice and take such steps in making the payment of amount of compensation to the employees. It would be thus found that although the Corporation, has taken steps later, the steps taken clearly show that the directions of the Industrial court have been complied with.

13. The learned Advocate for the petitioners has contended that although the petitioners have been treated as permanent with effect from 1981 they have not been paid the difference of wages; even if the payment is held at the rate of Rs. 300/- per month, they are entitled to difference of Rs. 154/- per month right from the year 1981. The learned Advocate for the respondent in this behalf has urged that the directions of the Industrial Court do not indicate as to whether the petitioners are entitled to back-wages. This is sought to be negated by the learned Advocate for the petitioners by contending that as soon as the petitioners are declared permanent they are impliedly entitled to difference. However, this argument ignores the provisions of Section 30, sub-section (1) sub-clause (b) of the PULP Act. Now the directions have to be specific on the question whether the employee is entitled to the salary with or without back-wages. Now if these words are missing namely 'with back-wages' in the order the respondent is entitled to contend that the petitioners are not entitled to backwages. This argument cannot be discarded because of the words used in Section 30, sub-section (1) sub-clause (b) which as stated above refers to the specific directions by the Court about the entitlement of the employee to the backwages. If that be not so, one cannot rush to the conclusion that merely because an employee is treated as permanent servant by virtue of his permanency he is entitled to backwages. It is therefore felt that even if the difference has not been paid in regard to backwages the non-action on part of the Corporation in that behalf may not come within the area of the contempt of the Court.

14. Now, the jurisdiction of the contempt is to be invoked it has been the consistent opinion of the Courts that it must be sparingly invoked. Unless the dignity of law and the majesty of the Court is being flouted by the party the Courts should be hesitant in involving this jurisdiction. In (: 1979 CriLJ952 in the case of Babu Ram Gupta v. Sudhir Bhasin and another the Supreme Court has observed that : 'It is well settled that while it is the duty of the Court to punish a person who tries to obstruct the course of justice or brings into disrepute the institution of judiciary, this power has to be exercised not casually or lightly, but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and the dignity of the courts'. Such being not the situation in this case I feel that there is no need to invoke contempt jurisdiction. As stated above, the respondent has also tendered apology in case the Court finds delay and that would also exhibit absence of intention or a wilful intention on the part of the respondent to flout the orders of the Court. Further, as stated above, by the filing of the writ petition by the respondent, the respondent must have been persuaded to believe that the matter has become sub judice and in that light the Corporation might have been persuaded to delay the action. That delay on the part of the Corporation by no means can be construed as an act coming within the purview of contempt of Court. For all these reasons I feel that the petitioners is not tenable. Accordingly, it is dismissed. Rule is discharged.

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